

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TAMIL. W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO. 2:21-CV-0308-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 13, 14). These matters were submitted for consideration without oral argument. The Court has reviewed the administrative record, and is fully informed. For the reasons discussed below, Plaintiff's Motion for Summary Judgment (ECF No. 13) is **DENIED**, and Defendant's Motion for Summary Judgment (EFC No. 14) is **GRANTED**.

JURISDICTION

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: The Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158–59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An "error is harmless where it is 'inconsequential to the ultimate nondisability determination.'" *Id.* at

1 1115 (citation omitted). The party appealing the ALJ's decision generally bears
2 the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396,
3 409–10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within
6 the meaning of the Social Security Act. First, the claimant must be unable “to
7 engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of not less than 12
10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
11 impairment must be “of such severity that [he or she] is not only unable to do [his
12 or her] previous work[,] but cannot, considering [his or her] age, education, and
13 work experience, engage in any other kind of substantial gainful work which exists
14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to
16 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
17 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v). At step one, the Commissioner
18 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
19 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
20

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b), 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
6 claimant suffers from "any impairment or combination of impairments which
7 significantly limits [his or her] physical or mental ability to do basic work
8 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
9 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
10 however, the Commissioner must find that the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant's impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
14 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
15 severe than one of the enumerated impairments, the Commissioner must find the
16 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

17 If the severity of the claimant's impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
20 defined generally as the claimant's ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
2 404.1545(a)(1), 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
3 analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
7 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
8 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
9 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
10 analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
14 the Commissioner must also consider vocational factors such as the claimant's age,
15 education and work experience. *Id.* If the claimant is capable of adjusting to other
16 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
17 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
18 work, the analysis concludes with a finding that the claimant is disabled and is
19 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
3 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
4 capable of performing other work; and (2) such work “exists in significant
5 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
6 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 On September 14, 2018, Plaintiff filed applications for Title II disability
9 insurance benefits and Title XVI supplemental security income benefits, alleging
10 an onset date of May 1, 2018. Tr. 27. The applications were denied initially, Tr.
11 82-115, and again on reconsideration, Tr. 116-149. Plaintiff appeared at a
12 telephonic hearing before an administrative law judge (“ALJ”) on November 30,
13 2020. Tr. 48-81. The ALJ denied Plaintiff’s claim on February 10, 2021. Tr. 27-
14 42.

15 As a threshold matter, the ALJ found Plaintiff meets the insured status
16 requirements of the Social Security Act through June 30, 2023. Tr. 29. At step
17 one of the sequential evaluation analysis, the ALJ found Plaintiff had not engaged
18 in substantial gainful activity since May 1, 2018, the alleged onset date. *Id.* At
19 step two, the ALJ found Plaintiff had the following severe impairments: breast
20 cancer status post bilateral mastectomy, cervical cancer status post hysterectomy,

1 post mastectomy lymphoma syndrome/lymphedema, mild cognitive disorder,
2 major depressive disorder, anxiety disorder, Asperger syndrome, and post-
3 traumatic stress disorder (“PTSD”). Tr. 29-30. At step three, the ALJ found
4 Plaintiff did not have an impairment or combination of impairments that meets or
5 medically equals the severity of a listed impairment. Tr. 30. The ALJ then found
6 Plaintiff had a residual functional capacity to perform light work with the
7 following limitations:

8 Specifically, the climbing of ladders, ropes, or scaffolds must be
9 limited to occasionally, while the climbing of ramps and stairs,
10 crouching (bending at the knees), and crawling must be limited to
11 frequently and reaching overhead with the left upper extremity must
12 be limited to occasionally. Within the assigned work area, there must
13 be less than occasional concentrated exposure to pulmonary irritants,
14 such as fumes, odors, dusts, gases, poor ventilation, Further, assigned
15 work must be limited to simple unskilled tasks with an SVP of 1 or 2
16 and reasoning level of 1 or 2. The assigned tasks must be learned in
17 30 days or less or by brief demonstration and must have minimal
18 change in the tasks as assigned. Additionally, the assigned tasks must
19 require no more than brief intermittent work related contact with
20 coworkers, supervisors and the public. Finally, there must be minimal
change in the tasks as assigned as well as minimal change in the work
setting where the tasks are performed.

16 Tr. 32-33.

17 At step four, the ALJ found Plaintiff was unable to perform any past relevant
18 work. Tr. 40. At step five, the ALJ found that, considering Plaintiff’s age,
19 education, work experience, and RFC, there were other jobs that existed in the
20 significant numbers in the national economy that Plaintiff could perform, such as

1 bench assembler, marker, and electrical assembler. Tr. 41-42. The ALJ concluded
2 Plaintiff was not under a disability, as defined in the Social Security Act, from
3 May 1, 2018, the alleged onset date, through February 10, 2021, the date of the
4 ALJ's decision. Tr. 42.

5 **ISSUE**

6 Whether the ALJ properly considered Plaintiff's subjective symptom
7 testimony.

8 **DISCUSSION**

9 Plaintiff contends the ALJ failed to properly consider the nature and
10 intensity of Plaintiff's limitations, and failed to offer clear and convincing reasons
11 for rejecting Plaintiff's subjective complaints. ECF No. 13 at 11-20.

12 An ALJ engages in a two-step analysis to determine whether a claimant's
13 subjective symptom testimony can be reasonably accepted as consistent with the
14 objective medical and other evidence in the claimant's record. Social Security
15 Ruling ("SSR") 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine
16 whether there is 'objective medical evidence of an underlying impairment which
17 could reasonably be expected to produce the pain or other symptoms alleged.'" *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (quoting *Vasquez v. Astrue*,
18 572 F.3d 586, 591 (9th Cir. 2009)). "The claimant is not required to show that her
19 impairment 'could reasonably be expected to cause the severity of the symptom
20

1 she has alleged; she need only show that it could reasonably have caused some
2 degree of the symptom.” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v.*
3 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).

4 Second, “[i]f the claimant meets the first test and there is no evidence of
5 malingering, the ALJ can only reject the claimant’s testimony about the severity of
6 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
7 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
8 omitted). General findings are insufficient; rather, the ALJ must identify what
9 symptom claims are being discounted and what evidence undermines these claims.
10 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
11 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
12 explain why he or she discounted claimant’s symptom claims). “The clear and
13 convincing [evidence] standard is the most demanding required in Social Security
14 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
15 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

16 The ALJ is instructed to “consider all of the evidence in an individual’s
17 record,” “to determine how symptoms limit ability to perform work-related
18 activities.” SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,
19 persistence, and limiting effects of a claimant’s symptoms, the following factors
20 should be considered: (1) daily activities; (2) the location, duration, frequency, and

1 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
2 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
3 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
4 other than medication, an individual receives or has received for relief of pain or
5 other symptoms; (6) any measures other than treatment an individual uses or has
6 used to relieve pain or other symptoms; and (7) any other factors concerning an
7 individual's functional limitations and restrictions due to pain or other symptoms.
8 *Id.* at *7–8; 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).

9 Here, the ALJ found Plaintiff's impairments could reasonably be expected to
10 cause some of the alleged symptoms. Tr. 34. However, the ALJ found Plaintiff's
11 statements concerning the intensity, persistence, and limiting effects of those
12 symptoms were not entirely consistent with the evidence. *Id.*

13 *1. Objective Medical Evidence*

14 Plaintiff challenges the ALJ's finding that Plaintiff's symptom testimony
15 was not supported by the objective medical evidence. ECF No. 13 at 15-17.

16 Objective medical evidence is a relevant factor, along with the medical
17 source's information about the claimant's pain or other symptoms, in determining
18 the severity of a claimant's symptoms and their disabling effects. 20 C.F.R. §§
19 404.1529(c)(2); 416.929(c)(2). However, an ALJ may not discredit a claimant's
20 symptom testimony and deny benefits solely because the degree of the symptoms

1 alleged is not supported by objective medical evidence. *Id.*

2 Regarding physical impairments, the ALJ found no evidence that Plaintiff's
3 physical conditions are disabling. Tr. 34. Specifically, the ALJ noted that Plaintiff
4 was discharged from physical therapy post double mastectomy and hysterectomy,
5 within follow up appointments showing Plaintiff ambulated normally, incisions
6 were healing well, and Plaintiff had normal strength and tone. *Id.* Plaintiff was
7 diagnosed with lymphedema and lymphoma with swelling and was referred to
8 physical therapy. *Id.* Plaintiff's surgeries were successful in removing the cancer,
9 with no evidence of recurrence and unremarkable physical exams, and the ALJ
10 incorporated lingering limitations into the RFC. Tr. 35. For example, the
11 lymphedema in the non-dominant left arm was considered as the ALJ limited
12 overhead reaching to occasionally on the left and asthma was considered in
13 limiting exposure to pulmonary irritants. *Id.*

14 Regarding mental impairments, the ALJ found Plaintiff has severe mental
15 impairments but the objective medical evidence is not consistent with the degree of
16 limitations alleged. Tr. 35. In June 2018, Plaintiff was tearful and anxious,
17 cognitively intact, but with some suicidal ideation, and in June 2019, was tearful
18 and overwhelmed. *Id.* The ALJ noted Plaintiff noted increased symptoms at some
19 exams as well as normal mood and psychiatric findings at other exams. Tr. 36
20 (citations to the record omitted). In July 2019, Plaintiff had positive findings, was

1 tearful, depressed, and anxious, with pressure speech, and started medication for
2 depression and anxiety. *Id.* That same month, Plaintiff was in a psychological
3 consultative examination where she needed significant prompting to offer
4 additional prompting, was mildly anxious on exam, had intense eye contact but
5 was cooperative, was an adequate historian, described her mood was “joyful a lot
6 of the time”, had coherent flow of thought, denied suicidal ideation, recent and
7 remote memory intact, demonstrated an appropriate fund of knowledge, but
8 maintained very limited insight and judgment regarding illness and need for help.
9 *Id.* In October 2019, Plaintiff had no acute findings. *Id.* (citation to the record
10 omitted). In December 2019, Plaintiff was undergoing a medication adjustment
11 and presented as tearful and anxious, and reported cold sweats. *Id.* (citation to the
12 record omitted). This same month, Plaintiff presented with extreme symptoms,
13 where after her medication was adjusted and she noted improved symptoms. Tr.
14 37 (citations to the record omitted). In June 2020, Plaintiff’s mental status exam
15 findings were normal as she was alert, oriented, in no distress, pleasant, with
16 normal attention and concentration, and she reported good control of anxiety with
17 medication. *Id.* (citations to the record omitted). In July 2020, Plaintiff reported
18 an increase of anxiety, so her medication regimen was again adjusted. *Id.*

19 The ALJ’s finding regarding physical impairments is supported by
20 substantial evidence. As to the mental health impairments, the ALJ addressed

1 Plaintiff's mental status exams, and overall concluded Plaintiff's mental health
2 impairments were due to situational stressors and medication management. Tr. 35-
3 37. The Court notes that the record includes substantial evidence of Plaintiff's
4 mental health symptoms, but the Court will not disturb the ALJ's finding. It is the
5 ALJ's role to resolve conflicts in the evidence. *Andrews v. Shalala*, 53 F.3d 1035,
6 1039 (9th Cir. 1995). Even if this were error, any error is harmless because the
7 ALJ considered other factors beyond the objective medical evidence. *Vertigan v.*
8 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).

9 2. Course of Treatment

10 Plaintiff challenges the ALJ's finding that Plaintiff's symptom reports were
11 inconsistent with Plaintiff's course of mental health treatment. ECF No. 13 at 17.

12 A claimant's course of treatment and any other measures taken to relieve
13 symptoms are relevant factor in considering the severity of symptom allegations.
14 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3); *see also Tommasetti v. Astrue*, 533
15 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response to treatment
16 can undermine a claimant's complaints of debilitating pain or other severe
17 limitations). A claimant's "unexplained, or inadequately explained, failure to seek
18 treatment or follow a prescribed course of treatment" can undermine symptoms
19 reports. *Fair v. Bowen*, 885 F.2d 597, 603-04 (9th Cir. 1989).

1 The ALJ noted Plaintiff was initially reluctant to start medication because
2 she felt it might negatively affect her ability to obtain custody of her daughter. Tr.
3 35 (citation to the record omitted). The ALJ also noted Plaintiff later regularly
4 attended mental health counseling, and started on medication. *Id.* (citations to the
5 record omitted). Plaintiff's delay in starting medication was explained, and
6 Plaintiff subsequently engaged in a prescribed course of treatment. This finding is
7 not supported by substantial evidence. However, any error is harmless because the
8 ALJ properly considered other factors. *Vertigan*, 260 F.3d at 1050.

9 3. *Situational Stressors*

10 Plaintiff challenges the ALJ's finding that Plaintiff's symptom testimony
11 was due in part to situational stressors. ECF No. 13 at 17-18.

12 An ALJ may consider precipitating and aggravating factors in assessing a
13 claimant's reported symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3). An
14 ALJ may discount a claimant's symptom testimony if a claimant suffers from
15 limitations as a result of situational stressors that are transient rather than due to
16 medical impairments. *Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1998).

17 The ALJ found Plaintiff's symptoms were influenced by situational stressors
18 that waxed and waned, including life events and medication changes. Tr. 37. The
19 ALJ noted that Plaintiff's mental health symptoms increased during transient
20 events like fighting cancer now in remission, figuring out living situations, dealing

1 with finances, engaging in a custody battle for her daughter (that Plaintiff won),
2 and caring for her daughter who has her own medical and mental health problems.
3 Tr. 36 (citations to the record omitted). Plaintiff does not challenge these specific
4 life stressors that the ALJ relied upon, just the medication management. ECF No.
5 13 at 17.

6 The ALJ's finding that Plaintiff's mental health symptoms were in part
7 related to these transient situational stressors is a reasonable interpretation of the
8 record. This finding is supported by substantial evidence.

9 *4. Daily Activities*

10 Plaintiff challenges the ALJ's finding that Plaintiff's symptom testimony
11 conflicted with her daily activities. ECF No. 13 at 18-19.

12 A claimant's daily activities is a relevant factor in assessing a claimant's
13 symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3). An adverse credibility
14 finding is warranted if (1) Plaintiff's activities contradict other testimony, or (2)
15 Plaintiff "is able to spend a substantial part of [her] day engaged in pursuits
16 involving the performance of physical functions that are transferable to a work
17 setting." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citation omitted).

18 The ALJ found Plaintiff had sole custody of her daughter, whom she
19 homeschools. Tr. 37. The ALJ also found Plaintiff drives, cooks, and looks for
20 work. *Id.* Specifically, the ALJ noted that Plaintiff prepares meals, does

1 household chores, pays bills, counts change, does crossword puzzles, researches,
2 attends church, gets together with friends, takes her daughter bowling, visits the
3 library, and walks outside. Tr. 30-31 (citations to the record omitted). The ALJ
4 also detailed Plaintiff engaged in a custody battle over her daughter, for who she
5 won full custody, and applied for disability benefits on behalf of her daughter. Tr.
6 35-36. (citations to the record omitted). Plaintiff challenges her activities in
7 relation to her homeschooling, stating that the extent of her care it to supervise
8 school and ensure that her daughter takes care of herself. ECF No. 13 at 19.
9 While the homeschool and care may be more limited in context of a sixteen-year
10 old daughter, the ALJ made a rational interpretation of the record that includes
11 numerous other daily activities.

12 The ALJ's finding that Plaintiff's daily activities conflicted with her
13 reported symptoms is a reasonable interpretation of the record. This finding is
14 supported by substantial evidence.

15 5. *Seeking Work*

16 Plaintiff challenges the ALJ's finding that her search for work conflicted
17 with her symptom testimony. ECF No. 13 at 19.

18 A claimant's search for employment while allegedly disabled is a proper
19 basis in discounting a claimant's testimony. *Bray v. Comm'r of Soc. Sec. Admin.*,
20 554 F.3d 1219, 1227 (9th Cir. 2009).

1 In July 2019, Plaintiff reported applying for jobs. Tr. 36. In September
2 2019, Plaintiff wanted to discuss returning to work and brought papers her human
3 resources department wanted her provider to complete. Tr. 35 (citation to the
4 record omitted).

5 The ALJ's finding that Plaintiff's job search was inconsistent with her
6 symptoms claims is a reasonable interpretation of the record. This finding is
7 supported by substantial evidence.

8 CONCLUSION

9 Having reviewed the record and the ALJ's findings, this Court concludes the
10 ALJ's decision is supported by substantial evidence and free of harmful legal error.

11 ACCORDINGLY, IT IS HEREBY ORDERED:

12 1. Plaintiffs Motion for Summary Judgment (ECF No. 13) is **DENIED**.


13 2. Defendant's Motion for Summary Judgment (ECF No. 14) is

14 **GRANTED.**

15 The District Court Executive is directed to enter this Order and Judgment
16 accordingly, furnish copies to counsel, and **CLOSE** the file.

17 DATED September 15, 2022.




THOMAS O. RICE
United States District Judge